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Adam Kolawa

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CHRISTIE, PARKER & HALE, LLP  
PO BOX 7068  
PASADENA, CA 91109-7068

EXAMINER

SELLERS, DANIEL R

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

1. Applicant's arguments filed 3/31/08 have been fully considered but they are not persuasive.
2. In the Final Office Action, **claims 2-6, 9 11, 24-29, 32, 33, 59, 60, 62-64, 72, 73, 75-78, and 81-86** are rejected under 35 USC 102(e) as being clearly anticipated by Ellis. The provisional application 60/270,463 is included with this action to show that Ellis has benefit of the provisional filing date with respect to these teachings. **Claims 57, 70, and 87** remain rejected under 35 USC 103(a).
3. Regarding **claim 64**, the examiner respectfully disagrees that Ellis does not teach any type of "schedule", because Ellis clearly teaches a schedule (see column 19, line 63-66 and figure 13, step 1354). Ellis teaches a "schedule of events" and in a drawing teaches a "schedule", wherein the plain definition of a schedule is a series of events. The provisional has support for a schedule, wherein Ellis teaches a "published schedule of radio content" (p. 3, lines 19-20).

Ellis also teaches "first and second delivery times" in the broadest reasonable sense, wherein it is not explicit that the first delivery time is a first unique delivery time, or a time when the first known delivery of an item is occurring. Therefore, a first delivery time is interpreted to be before a second time, and no extra meaning is afforded to the claimed limitation. The provisional discloses "a published schedule of radio contents", wherein it is inherent a schedule defines an order of events and a first and second delivery time. The provisional also teaches immediately rewinding to the beginning of the song (p. 4, lines 21-22) and automatically changing the station and rewinding to the

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start of content of interest (p. 4, line 29 - p. 5, line 2). It is implicit that the combination of these teachings supports, in the broadest reasonable sense, the rejection. The provisional reads on "*automatically tuning, without user intervention since the tuning to the first audio channel, to the second audio channel for receiving the selected second audio pieces based on the identified second audio channel and the identified second delivery time*", because there will exist a first time in which a first audio piece, with respect to a second delivery time, is automatically and immediately tuned to without user intervention. Likewise, there will exist a second delivery time after any other first time, when the content is automatically and immediately tuned to without user intervention.

Ellis teaches "*temporarily storing in a buffer as the customized audio program the first and second audio pieces*", wherein the provisional provides support for buffering (p. 2, lines 3-6), whether it is multiple or single buffers. The examiner mistakenly quoted column 9, lines 29-32 and should have quoted column 9, lines 29-34 with respect to the rejection of the aforementioned limitation. Ellis teaches "one of the buffers... to provide an audio output for the listener" (column 9, lines 33-34). The provisional supports simultaneously digitizing and recording multiple radio stations, wherein immediate and automatic rewinding to content of interest on other stations may occur (p. 4, line 16 - p. 5, line 2).

Ellis teaches "*outputting the temporarily stored audio pieces responsive to a detected playback condition, which invokes playback of the customized audio program*". Figure 13 teaches this feature, wherein step 1370 or 1374 teaches this feature, wherein

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figure 13, step 1362 is mistakenly relied upon previously. Figure 13, step 1370 or 1374 teaches the playback condition, because it is implied by a step to automatically switch or skip back to content of interest (i.e. the system has a mechanism for recognizing the playback of the customized audio program, or the content of interest). The provisional provides support as stated above (see p. 2, lines 3-6 and p. 4, line 16 - p. 5, line 2).

The provisional teaches these features, because the claimed limitations do not exclude other data than the "customized audio program" from being present in the buffer. The examiner believes the teachings of content of interest stored in a memory in Ellis implicitly includes plural first and plural second audio pieces stored in a buffer in a order of delivery times (i.e. there exists an audio piece of interest that precedes another piece and they can include as few or as many different audio pieces buffered between them).

The provisional teaches these features, because it teaches immediate and automatic rewinding to a piece of interest. Ellis is implying that the current played back audio piece may have been buffered, and other content of interest has been buffered in the past and it is necessary to rewind to access the beginning of the content of interest.

The use of "may" also implies that the audio content of interest is not interrupted when another piece is identified as a content of interest, and the provisional supports this teaching (p. 4, line 29 - p. 5, line 2). In the broadest reasonable interpretation of the claim language, Ellis is found to read on these features.

4. Regarding **claim 86**, Ellis teaches *"the automatic tuning to the second audio channel does not interrupt the playback of the customized audio program"*. Ellis teaches, in the provisional, that the system "may automatically change to the station

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with the content of interest, and may automatically rewind to the start of the content" (p. 5, lines 1-2). The provisional also teaches immediate rewinding to the beginning and recording multiple radio stations in a digital memory (p. 4, lines 16-17). The "may automatically" implies that the system makes a decision to change or not to change, and it is implicit that content of interest is heard in its entirety before switching.

/DS/

/Sinh N Tran/

Supervisory Patent Examiner, Art Unit 2615